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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,530	08/07/2001	Lawrence D. Bergman	YOR920000742US1	2121

7590 06/15/2005

Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560

EXAMINER

TO, BAOQUOC N

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,530

Applicant(s)

BERGMAN ET AL.

Examiner

Baoquoc N. To

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/04/2005 has been entered.

Claims 1-49 are pending in this application.

Response to Amendment

2. The DECLARATION OF PRIOR INVENTION filed on 04/04/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Acharya reference.

A. Numbering of paragraph in the Declaration is not corrected.

B. Inventor Chung-Sheng Li signature is missing from the new Declaration wherein the new Declaration has only two signatures of Lawrence D. Bergman and Vittorio Castelli.

C. The applicant argues "an attorney affidavit and states that an inventor or an attorney is not required to drop all other work and concentrate on the particular invention involved... This reasonable diligence has been establish since the attorney work reasonably hard on..." However, the attorney has not made any statements

and/or shown any kind of evidences which would support the claim that attorney indicated above, according to the MPEP, 2138.06.

D. Diligence has not shown from Oct 30, 2000 to January 2, 2001 which the inventor Vittorio Castelli sent a draft parent and application relative figures to the inventors' attorney a the law firm of Ryan, Mason & Lewis, LLP and from July 23, 2001 to August 7, 2001.

Response to Arguments

3. The applicant also argues that "Acharya fails to disclose a query specified by a user via at least one sample set over a single example, as evidenced by page 2, lines 5-6, of the specification where it states that a "similarity search using a single example is only moderate effective. To improve retrieval performance, the user can provide multiple example..."

The examiner respectfully disagrees with the above argument. Although, the Acharya is silence on the query, which is specified by the user via at least one sample set; however, the query image 30q (col. 4, lines 19-27) may also specified by the user. Acharya does not say which does not mean the query 30q is not specified by the user. In addition, in the broadest interpretation of the claim language, which allowed by the MPEP, since the claim is not well defined, the query image 30q is the query example, which specified by the user.

The applicant argues "the examiner admits that Acharya does not teach a scoring function operable for use with a multidimensional indexing structure associated with at least one database."

The examiner respectfully disagrees with the above argument. Acharya states “for very large databases, computing the distance from the query image 30q to all other images 30 in the database 40 may take substantial time...multi-dimensional search techniques may be employed to retrieve a subset of image lying in the neighborhood of the query image 30q” (col. 7, lines 46-53). This suggests the images 30 are indexed and stored in the multidimensional structure and using the query 30q to retrieves the images.

Claims 2-24 and 26-48 are depended on the independence claims 1, 25 and 49; therefore, they are rejected under the same reason.

Please previous Office Action for all rejected claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Noguchi et al. (US. Patent No. 5,991,755) Patent date: 11/23/1999.

Liddy et al. (US. Patent No. 6,026,388) Patent date: 02/15/2000.

Caudill et al. (US. Patent No. 6,766,316 B2) Patent date: 07/20/2004.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is at 571-272-4041 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at 571-272-4107.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follow:

(703) 872-9306 [Official Communication]

Baoquoc N. To

June 11, 2005



JEAN M. CORRIELUS
PRIMARY EXAMINER